IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11515 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KADIA BHAVESHKUMAR JAYANTILAL

Versus

SARDAR PATEL UNIVERSITY

Appearance:

1. Special Civil Application No. 11515 of 2001

MR GM JOSHI for Petitioner No. 1

MR MITUL K SHELAT for Respondent No. 1

MS NISHA PARIKH for MR RAMNANDAN SINGH for Respondent No. 2

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 28/08/2002

ORAL JUDGEMENT

#. Rule. Mr.Mitul Shelat for respondent No.1-University waives service of rule and Ms.Nisha Parikh for Mr.Ramnandan Singh for respondent No.2 waives service of rule.

#. At the joint request of the learned counsel for the parties, the matter is heard and finally disposed of today.

#. The petitioner is a practising advocate at the District Court at Anand. He appeared in the Third Year LL.B. (Special) (First Semester) examination held in November, 2000. In first three papers; (1) Criminal Procedure Code, Juvenile Justice Act and Probation of Offenders Act; (2) Law of Evidence and (3) Civil Procedure Code and Limitation Act. In the internal examination held by the respondent No.2-college he secured 22 marks in each of those three papers out of total 30 marks. Thus, his aggregate of internal college examination was 66 marks out of total 90 marks in three subjects. Whereas, he secured 45, 47, and 43 respectively in the aforesaid papers out of marks of 70 in the external examinations held by the university. Thus, his external total was 135 out of 210 marks. He secured 135 out of 210 marks in external examinations held by the university and 66 out of 90 marks held by the respondent-college. Thus, his total aggregate was 201 marks out of 300 total marks [Annexure-B (marks sheet of First Semester)].

#. He appeared in the LL.B. (Special)(Second Semester) examination held in March-April, 2001 conducted by the respondent-university in all 7 papers; (1) Paper No.IV-Arbitration, Conciliation and Alternative Dispute Resolution Systems; (2) Paper No.V-Intellectual Property Law; (3) Paper No.VI-Legal Language / Legal Writing including General English; (4) Paper No.VII-Moot Court, Pretrial Preparations and Participation in Trial Proceedings; (5) Paper No.VIII-Drafting, Pleading and Conveyancing; (6) Paper No.IX-Professional Ethics, Accountancy for Lawyers and Bar Bench Relation; and (7) Paper No.X-Public Interest Lawering, Legal Aid and Para Legal Services.

* At this stage, it may be stated that there was no external university examination for last four papers i.e. paper Nos.VII to X. It had only internal college exam and out of total 100 marks minimum 40 marks were required to be obtained for passing.

* The petitioner secured 47, 50 and 36 marks respectively in paper Nos.IV to VI making total aggregate of 133 marks out of 210 marks in the Second Semester examination. Whereas, 21, 24 and 18 marks respective were obtained by him in the internal college examination making total aggregate of 63 marks out of 90 marks.

* He secured 59, 59, 56 and 56 marks for the last four paper Nos. VII to X in the internal college exam out of 100 marks making his total of four subjects to 230 out of 400 total marks.

#. Thus, total of second semester for external examination held by the university was 133 out of 210 and internal college exams was 293. The grand total was 426 for the Second Semester. As stated earlier, total of First Semester was 135 out of 210 marks in external examinations and 66 in internal college examinations making grand total of 201 marks.

#. Thus, his total of First and Second Semesters in the external university exams was 268 and internal college examinations was 359. Thus, grand total for both the semesters was 627 marks out of 1000 marks (Annexure-B collectively). Thus, it is clear that the petitioners secured 359 total marks in both the the semesters out of 580 marks, whereas, he secured only 268 total marks of external university examinations out of 420 marks.

#. Admittedly, his total aggregate comes to 62.7% marks.

#. By way of this petition, the petitioner has prayed that necessary directions be issued to the respondents to give Ist Class and Gold Medal to him on the basis of the marks obtained by him in the examination of the subject of papers No.I to VI conducted by the university holding that the internal marks given to the students without conducting any examination by the college in respect of papers Nos.VII to X would amount to sacrificing the merit of the meritorious students.

#. During pendency and final disposal of this petition, the respondent university amended Rule Nos.25, 26 and 27 on 11.2.2002, therefore, the petitioner with the permission of the court got this petition amended and challenged the amended rule Nos.25, 26 and 27 for admission in the degree of LL.B. (Special) as contrary to each other and not tenable and prayed that the same may be struck down by declaring them as null and void.

#. I would like to reproduce amended rule Nos.25, 26 and 27, which are as under :-

"R.L.25(a) The University will held examination for the paper No.1, 2 and 3 for the First Semester and paper No.4, 5 and 6 for the Second Semester of LL.B. (Special) degree course twice a year i.e. in October/November and March/April and for paper no.7,8,9 and 10 of Practical training once in a year for fresh students i.e. March/April and for ex-student, in October/November also.

R.L.26 The Scheme of Examination for the LL.B. (Special) Degree Course will be as under :-

Paper No.	Subject	Paper Duration	External Exam.	Internal Ass.	Total Marks
	FIRST SEMESTER				
I	Criminal Procedure Code Juvenile Justice Act, and Probation of Offenders Act	1 3 hrs	70	30	100
I	Law of Evidence	1 3 hrs	70	30	100
III	Civil Procedure Code and Limitation Act	1 3 hrs	70	30	100
	SECOND SEMESTER				
IV	Arbitration, Conci- liation and Limitation Act, Resolution System	1 3 hrs	70	30	100
V	Intellectual Property Law	1 3 hrs	70	30	100
VI	Legal Language/Legal Writing including general English	1 3 hrs	70	30	100

PAPERS FOR PRACTICAL TRAINING SCHEME					
VII	Moot Court, Pretrial preparation & partici-pation in trial proceedings	1	2 hrs	50	50 100
VIII	Drafting, Pleading and Conveyancing	1	2 hrs	50	50 100
IX	Professional Ethics, Accountancy for Lawyers and Bar Bench Relations	1	2 hrs	50	50 100
X	Public Interest Lawyering Legal Aid and Para Legal Services	1	2 hrs	50	50 100

R.L.27 STANDARD OF PASSING :

(a) To pass any semester examination for the LL.B. (Special) degree, that is for First Semester paper No.1 to 3 and for second semester paper no.4 to 6 a candidate must obtain :-

(i) at least 40% marks in each paper at the University Examination as well in the total of the University Examination and Internal Assessment added together, and

(ii) 50% of the total marks obtained in the aggregate of all the papers i.e. from paper No.1 to 6 and

(iii) in papers No.7,8,9 and 10 at least 40% marks in each paper and 50% of the marks in aggregate in all the papers of Practical Training.

(b) AWARD OF CLASSES :

(i) The successful candidates who pass in all the papers at one sitting and obtained not less than 50% of the total marks obtainable in all 10 papers will be placed in the Second class.

(ii) to Successful candidate who obtains :

(a) at least 55% of the total marks in the aggregate of all the subjects separately in the Internal Assessment and the University Examination and

(b) not less than 66% of the total marks in the aggregate of all 10 papers will be placed in First Class.

(c) The successful candidates who obtain :

(i) at least 60% of the marks in the aggregate of all the subjects separately in the internal assessment and the University Examination, and

(ii) Not less than 70% of the marks in the aggregate of all the subjects will be declared to have passed the Examination in First Class with Distinction.

NOTE : (1) For awarding Gold Medal performance of candidate in semester examination i.e. First Semester paper No.1 to 3 and Second Semester paper No.4 to 6 and the papers of practical training i.e. paper No.7 to 10 shall be considered

(2) candidate passing any semester examination in compartments will not be eligible for the award of a class."

##. Mr.Mitul Shelat, learned counsel appearing for the respondent-university rightly submitted that the respondent-university made changes in rule Nos.25, 26 and 27 as per directions issued by the Bar Council of India and it has nothing to do with the case of the petitioner. It is not amended with a view to frustrate the case of the

petitioner. Mr.Shelat submitted that the case of the petitioner is governed under the old rules, which are not under challenge and as per the old rules the petitioner has not secured first class, therefore, he is not entitled for "Gold Medal".

##. For appreciating his contention, I would like to reproduce the old rule Nos.25, 26 and 27, which are as under :-

"R.L.25(a) The University will held examination for the paper No.1, 2 and 3 for the First Semester and paper No.4, 5 and 6 for the Second Semester of LL.B. (Special) degree course twice a year i.e. in October/November and March/April.

(b) There shall be Internal Assessment of 100 marks for paper no.7,8,9 and 10 as prescribed by the Bar Council of India.

R.L.26 The Scheme of Examination for the LL.B. (Special) Degree Course will be as under :-

Paper No.	Subject	Dura- tion	External Exam.	Internal Ass.	Total Marks
	FIRST SEMESTER				
I	Criminal Procedure Code Juvenile Justice Act, and Probation of Offenders Act	1 3 hrs	70	30	100
I	Law of Evidence	1 3 hrs	70	30	100
III	Civil Procedure Code and Limitation Act	1 3 hrs	70	30	100
	SECOND SEMESTER				
IV	Arbitration, Counci- liation and Limitation Act, Resolution System	1 3 hrs	70	30	100
V	Intellectual Property Law	1 3 hrs	70	30	100

VI	Legal Language/Legal Writing including general English	1	3 hrs	70	30	100

PAPERS FOR PRACTICAL TRAINING SCHEME

VII	Moot Court, Pretrial preparation & participation in trial proceedings	1	--	--	100	100
VIII	Drafting, Pleading and Conveyancing	1	--	--	100	100
IX	Professional Ethics, Accountancy for Lawyers and Bar Bench relations	1	--	--	100	100
X	Public Interest Lawyering Legal Aid and Para Legal Services	1	--	--	100	100

R.L.27 STANDARD OF PASSING :

(a) To pass any semester examination for the LL.B. (Special) degree, that is for First Semester paper No.1 to 3 and for second semester paper no.4 to 6 a candidate must obtain :-

(i) at least 40% marks in each paper at the University Examination as well in the total of the University Examination and Internal Assessment added together, and

(ii) 50% of the total marks obtained in the aggregate of all the papers i.e. from paper No.1 to 6, and

(iii) In papers No.7,8,9 and 10 at least 40% marks in each paper and 50% of the marks in aggregate in all the papers of Practical Training.

(b) AWARD OF CLASSES :

(i) The successful candidates who pass in all

the papers at one sitting and obtained not less than 50% of the total marks obtainable will be placed in the Second Class.

(ii) The Successful candidate who obtains :

(a) at least 55% of the total marks in the aggregate of all the subjects separately in the Internal Assessment and the University Examination; and

(b) not less than 66% of the total marks in the aggregate of all the subjects will be placed in First Class.

(c) The successful candidates who obtain :

(i) at least 60% of the marks in the aggregate of all the subjects separately in the Internal assessment and the University Examination; and

(ii) Not less than 70% of the marks in the aggregate of all the subjects will be declared to have passed the Examination in First Class with Distinction.

NOTE : (1) For awarding Gold Medal, performance of candidate in semester examinations, i.e. First Semester paper No.1 to 3 and Second Semester paper No.4 to 6 shall be considered.

(2) Candidate passing any semester examination in compartments will not be eligible for the award of a class."

##. We are not much concerned with either Rule No.25 or 26. The material rule is rule No.27. Under old Rule

No.27(a) bare minimum requirement to pass any Semester Examination for LL.B. (Special) Degree is provided. For First Semester Paper Nos.I to III and for Second Semester Paper Nos.IV to VI, a student has to obtain at least 40% marks in each paper at the university examination as well as in the total of the university examination and internal assessment added together and 50% of the total marks obtained in the aggregate of all the papers from paper Nos. I to VI. In paper Nos.7, 8, 9 and 10, at least 40% marks in each paper and 50% of the marks in aggregate in all paper of practical training, which is required. This is the bare minimum for passing LL.B. (Special) degree.

##. Rule 27(b)(i) provides that, successful candidates, who pass in all the papers at one sitting and obtained not less than 50% of the total marks obtainable will be placed in the Second Class. Whereas under Rule 27(b)(ii)(a) the successful candidate who obtained at least 55% of the total marks in the aggregate of all subjects separately in the Internal Assessment and the University Examination and not less than 66% of the total marks in the aggregate of all the subjects will be placed in First Class.

##. Whereas under Rule 27(b)(ii)(c) a successful candidates who obtained at least 60% of the marks in the aggregate of all the subjects separately in the internal assessment and the University Examination and not less than 70% of the marks in the aggregate of all the subjects will be declared to have passed the Examination in First Class with Distinction.

##. As per foot note (1) to Rule 27 for awarding Gold Medal, performance of candidates in semester examinations, i.e. First Semester - paper no.1 to 3 and Second Semester paper no.4 to 6 shall have to be taken into consideration.

However, as per foot Note (2) to Rule 27 a candidate passing any semester examination in compartments will not be eligible for the award of a class with which we are not concerned.

##. From the letter dated 24.11.1976 addressed by respondent-Sardar Patel University to Shri Kantilal C. Patel, Retired District Deputy Collector, Baroda is annexed with the reply affidavit filed by Shri R.V.Patel for respondent-University makes it clear that the Gold Medal with the name inscribed on it viz. "JUSTICE CHATURBHAI N. PATEL GOLD MEDAL FUND" and the order of the award should be awarded every year at Convocation to a candidate who stands first in the First Class at the LL.B.

(Special) examinations. As per the letter dated 8.8.1991 annexed to the reply affidavit of Shri Patel for the respondent-University, the resolution No.6 was passed on 18.5.1991 in the meeting of the Syndicate of the University to the effect that for awarding Gold Medal only external marks should taken into consideration.

##. Admittedly, as per the marks sheet at Annexure-B of both the Semesters the petitioner has secured total 627 out of 1000 marks. Thus, he has secured only 62.7% marks, whereas, for securing First Class, he has to obtain minimum 66% total aggregate as provided in Rule 27(b)(ii)(b). When the petitioner failed to obtain First Class then there is no question of awarding "Gold Medal" to him as per the decision of the university referred to in the letter dated 24.11.1996. Only on this count the petition is required to be dismissed.

##. Under the circumstances, I am not required to go into the challenge to newly amended rule Nos.25, 26 and 27 because according to me it would be purely an academic discussion. The said amended rules have come into force with effect from 11.2.2002, therefore, it would have no application to the case of the petitioner. That is also an additional ground on which I refuse to entertain the challenge made in this petition qua amended rule Nos.25, 26 and 27.

##. In view of the above discussion, this petition fails and is dismissed. Rule discharged with no order as to costs.

(B.J.Shethna, J.)
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